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Corporation; Polo Retail, LLC; Polo Ralph Lauren Corporation,
12 doing business in California as Polo Retail Corporation; and
Fashions Outlet of America, Inc.
13

14
15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA

17 ANN OTSUKA, an individual and on behalf
18 of all others similarly situated; JANIS
KEEFE, an individual; CORINNE PHIPPS,
19 and individual; JUSTIN KISER, an
individual; and RENEE DAVIS,
20

21 Plaintiff,

v.

22 POLO RALPH LAUREN CORPORATION;
POLO RETAIL, LLC; POLO RALPH
23 LAUREN CORPORATION, DOING
BUSINESS IN CALIFORNIA AS POLO
24 RETAIL CORPORATION; AND
FASHIONS OUTLET OF AMERICA, INC.,
25

26 Defendants.

Case No. C07-02780 SI

**DEFENDANTS' ADMINISTRATIVE
MOTION FOR LEAVE TO CONTACT
DECLARANT CLASS MEMBERS**

Dept.: Courtroom 10, 19th Floor
Judge: Hon. Susan Illston

Trial Date: March 8, 2010

1 **I. INTRODUCTION**

2 Defendants Polo Ralph Lauren Corporation; Polo Retail, LLC; Polo Ralph Lauren
3 Corporation, doing business in California as Polo Retail Corporation; and Fashions Outlet of
4 America, Inc. (collectively “Polo”) bring this administrative motion pursuant to Civil Local Rule 7-
5 11 for leave to contact three former employees (“Declarants”) of Polo who provided Polo with
6 declarations in support of Polo’s Opposition to Class Certification while they were employees of
7 Polo. Polo has listed these individuals on its trial witness list and sent them subpoenas to appear at
8 trial. At least one Declarant has contacted Polo’s counsel because he was confused by the subpoena
9 and wanted to know the details surrounding his appearance at trial. As he is now a member of the
10 class, Polo’s counsel has thus far not spoken with any of the Declarants but instructed support staff to
11 inform the Declarants that Polo’s counsel is not currently ethically permitted to speak with them.
12 Counsel for Plaintiffs have refused to stipulate to permit these three former employees to speak with
13 Polo’s counsel, requiring this motion.

14 These three individuals previously provided Polo with supporting declarations describing
15 their experience with loss prevention searches, a critical issue at trial. Polo intends to call these
16 individuals as witnesses at trial, but would like the opportunity to 1) explain to these former
17 employees administratively how their appearance at trial will work, and 2) discuss the substance of
18 their testimony. Because counsel for Plaintiffs has refused to stipulate to this limited communication,
19 it has become necessary for Polo to file this administrative motion for leave to contact these three
20 former employees.

21 **II. STATEMENT OF FACTS**

22 In or about June 2008 Polo employed Timothy Homan, Katy Cantwell and Robert Lo Monaco
23 in its Mammoth, Costa Mesa, and San Francisco stores, respectively. These individuals provided
24 Polo with declarations in support of Polo’s Opposition to Class Certification. In their declarations
25 these three employees described their experiences with loss prevention searches in Polo retail stores.

26 Since June 2008, these three employees left Polo’s employ and became members of the class.

27 In February, 2010, Polo issued subpoenas to these individuals to appear at trial. Declaration
28 of William J. Goines, ¶ 3. Not all of the subpoenas have yet been served, but at least one class

1 member has already left messages for Polo's counsel indicating his confusion at having received a
 2 subpoena and requesting a return phone call explaining what he needs to do. Declaration of William
 3 J. Goines, ¶ 4. The individual called again at a later time and spoke to a member of Polo's counsel's
 4 support staff, who instructed him that Polo's counsel was not ethically permitted to speak with him at
 5 that time, but that we may have someone from Polo respond to their questions. We have since
 6 decided to file this motion rather than have any further contact. Declaration of William J. Goines, ¶
 7 5.

8 **III. ARGUMENT**

9 The "district court has both the duty and the broad authority to exercise control over a class
 10 action and to enter appropriate orders governing the conduct of counsel and parties." *Gulf Oil Co. v.*
 11 *Bernard*, 452 U.S. 89 at 100; *see also* Fed. R. Civ. Proc. 23(d). "Restrictions on communications
 12 with the class can create problems...Barring direct communications would seriously handicap the
 13 employer's defense because the employer must rely on those individuals for evidence and for
 14 assisting its attorneys. In such circumstances, the court can...certif[y] a subclass for which the court
 15 could permit limited communications with the defendant." *Annotated Manual for Complex Litigation*
 16 4th, 2009 ed., David F. Herr, 21.33.

17 Accordingly, these witnesses previously provided Polo with helpful information and Polo
 18 intends to call these individuals at trial. Polo will be seriously handicapped if they do not have the
 19 opportunity to present the testimony of these witnesses as evidence but Polo first must be permitted
 20 to speak with them about their testimony. Furthermore, it can be intimidating for a lay witness to
 21 receive a subpoena with absolutely no explanation, and Polo would like an opportunity to alleviate
 22 the confusion expressed by at least one Declarant and that will likely be experienced by all three.

23 Polo seeks the permission of the Court to contact these three Declarants named on Polo's trial
 24 witness list to 1) explain to these former employees administratively how their appearance at trial will
 25 work and 2) discuss the substance of their testimony. Polo is mindful that these individuals are now
 26 class members and is seeking the permission of the court to contact these individuals in a respectful
 27 manner that will not impact the rest of the class.

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1 Because counsel for Plaintiffs has refused to stipulate to this limited communication, it has
2 become necessary for Polo to file this administrative motion for leave to contact these three former
3 employees. Declaration of William J. Goines, ¶ 6.

4 **III. CONCLUSION**

5 Accordingly, Polo requests the Court grant the motion and allow it to contact Katy Cantwell,
6 Tim Homan and Robert Lo Monaco.

7 Dated: February 12, 2010

GREENBERG TRAURIG, LLP

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9 By: /s/ William J. Goines

10 William J. Goines
11 Jeremy A. Meier
12 Karen Rosenthal
13 Cindy Hamilton

14 Attorneys for Defendants Polo Ralph Lauren
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